

SENATE BILL 540

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HB 809/02 - ENV

2003 Regular Session
3r1568

By: **Senators Grosfeld, Britt, Exum, Kelley, and Teitelbaum**

Introduced and read first time: January 31, 2003

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Agriculture - Restricted Use Pesticide - Use and Access**

3 FOR the purpose of requiring the Secretary of Agriculture to conduct a criminal
4 history records check on certain individuals under certain circumstances;
5 requiring certain employers to conduct a criminal history records check on
6 certain employees under certain circumstances; providing for immunity from
7 certain liability for certain persons conducting criminal history records checks
8 under certain circumstances; prohibiting certain persons from using, applying,
9 purchasing, mixing, or loading restricted use pesticides under certain
10 circumstances; allowing certain persons employed by certified private
11 applicators to use or apply restricted use pesticides under certain
12 circumstances; providing certain civil penalties for certain violations; requiring
13 the Department of Agriculture to establish a tracking system for certain
14 pesticide purchases; requiring the Department and Secretary to adopt certain
15 regulations; and generally relating to restricted use pesticides.

16 BY repealing and reenacting, with amendments,
17 Article - Agriculture
18 Section 5-206, 5-209, and 5-210.2(a)
19 Annotated Code of Maryland
20 (1999 Replacement Volume and 2002 Supplement)

21 BY adding to
22 Article - Agriculture
23 Section 5-207.2
24 Annotated Code of Maryland
25 (1999 Replacement Volume and 2002 Supplement)

26 BY repealing and reenacting, with amendments,
27 Article - Courts and Judicial Proceedings
28 Section 5-619
29 Annotated Code of Maryland
30 (2002 Replacement Volume)

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article - Agriculture**

4 5-206.

5 (a) The Secretary shall establish, by rule or regulation, qualifications for
6 licensing and certification in each category established by § 5-207 to assure
7 competence and responsibility in the application of pesticides.

8 (b) The Secretary may issue licenses, permits, and certificates only to an
9 applicant who meets the requirements established by the Department.

10 (C) (1) TO DETERMINE AN INDIVIDUAL'S ELIGIBILITY FOR CERTIFICATION
11 AS AN APPLICATOR OF OR FOR A PERMIT TO SELL OR DISTRIBUTE A RESTRICTED USE
12 PESTICIDE, THE SECRETARY SHALL:

13 (I) CONDUCT A BACKGROUND CHECK OF THE INDIVIDUAL; AND

14 (II) APPLY TO THE CRIMINAL JUSTICE INFORMATION SYSTEM
15 CENTRAL REPOSITORY OF THE DEPARTMENT OF PUBLIC SAFETY AND
16 CORRECTIONAL SERVICES FOR A NATIONAL AND STATE CRIMINAL HISTORY
17 RECORDS CHECK OF THE INDIVIDUAL.

18 (2) AS PART OF THE APPLICATION FOR A CRIMINAL HISTORY RECORDS
19 CHECK, THE DEPARTMENT SHALL SUBMIT TO THE CRIMINAL JUSTICE INFORMATION
20 SYSTEM CENTRAL REPOSITORY:

21 (I) TWO COMPLETE SETS OF THE INDIVIDUAL'S LEGIBLE
22 FINGERPRINTS TAKEN ON FORMS APPROVED BY THE DIRECTOR OF THE CRIMINAL
23 JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY AND THE DIRECTOR OF THE
24 FEDERAL BUREAU OF INVESTIGATION;

25 (II) THE MANDATORY PROCESSING FEE REQUIRED BY THE
26 FEDERAL BUREAU OF INVESTIGATION FOR A NATIONAL CRIMINAL HISTORY
27 RECORDS CHECK; AND

28 (III) THE FEE AUTHORIZED UNDER § 10-221(B)(7) OF THE CRIMINAL
29 PROCEDURE ARTICLE FOR ACCESS TO MARYLAND CRIMINAL HISTORY RECORDS.

30 (3) IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE CRIMINAL
31 PROCEDURE ARTICLE, THE CENTRAL REPOSITORY SHALL FORWARD TO THE
32 INDIVIDUAL AND THE DEPARTMENT THE INDIVIDUAL'S CRIMINAL HISTORY
33 RECORDS INFORMATION.

34 (4) INFORMATION OBTAINED FROM THE CRIMINAL JUSTICE
35 INFORMATION SYSTEM CENTRAL REPOSITORY UNDER THIS SUBSECTION SHALL BE:

36 (I) CONFIDENTIAL; AND

1 (II) USED ONLY FOR THE PURPOSE AUTHORIZED BY THIS SECTION
2 AND REGULATIONS ADOPTED BY THE DEPARTMENT TO CARRY OUT THIS SECTION.

3 (D) THE SECRETARY SHALL ADOPT REGULATIONS REQUIRING EMPLOYERS TO
4 CONDUCT A NATIONAL AND STATE CRIMINAL HISTORY RECORDS CHECK AND
5 OBTAIN A JOB HISTORY REPORT FOR EACH CURRENT AND PROSPECTIVE EMPLOYEE
6 WHO, IN THE SCOPE OF EMPLOYMENT, HAS OR WILL HAVE ACCESS TO RESTRICTED
7 USE PESTICIDES, INCLUDING:

8 (1) EMPLOYEES OF CERTIFIED APPLICATORS;

9 (2) EMPLOYEES OF PESTICIDE MANUFACTURING AND STORAGE
10 FACILITIES; AND

11 (3) PILOTS OF CROP DUSTERS, DRIVERS OF APPLICATION TRUCKS, AND
12 OTHER PERSONS RESPONSIBLE FOR THE APPLICATION OF A RESTRICTED USE
13 PESTICIDE.

14 (E) THE SECRETARY SHALL ADOPT REGULATIONS PROVIDING FOR THE TYPES
15 AND SEVERITY OF CRIMES THAT SHALL DISQUALIFY AN APPLICANT FOR
16 CERTIFICATION OR A POTENTIAL EMPLOYEE FOR EMPLOYMENT.

17 [(c)] (F) The Secretary may establish the conditions under which licenses,
18 permits, and certificates may be revoked, suspended, reinstated, or renewed.

19 [(d)] (G) The Secretary may establish minimum requirements for financial
20 responsibility for all damages which may be incurred in the commercial application of
21 pesticides.

22 5-207.2.

23 (A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A
24 PERSON, OTHER THAN A CERTIFIED APPLICATOR, MAY NOT USE OR APPLY A
25 RESTRICTED USE PESTICIDE UNLESS THE PERSON IS:

26 (I) COMPETENT;

27 (II) ACTING UNDER THE INSTRUCTIONS AND CONTROL OF A
28 CERTIFIED APPLICATOR WHO IS RESPONSIBLE FOR THE ACTIONS OF THE PERSON;
29 AND

30 (III) WITHIN CONTINUOUS VISUAL AND VOICE CONTACT WITH THE
31 CERTIFIED APPLICATOR.

32 (2) A PERSON EMPLOYED BY A CERTIFIED PRIVATE APPLICATOR MAY
33 USE OR APPLY A RESTRICTED USE PESTICIDE IF THE PERSON IS SUPERVISED BY THE
34 CERTIFIED PRIVATE APPLICATOR.

35 (B) A PERSON, OTHER THAN A CERTIFIED APPLICATOR, MAY NOT PURCHASE,
36 MIX, OR LOAD A RESTRICTED USE PESTICIDE UNLESS THE PERSON IS:

1 (1) COMPETENT;

2 (2) ACTING UNDER THE INSTRUCTIONS AND CONTROL OF A CERTIFIED
3 APPLICATOR WHO IS RESPONSIBLE FOR THE ACTIONS OF THE PERSON; AND

4 (3) WITHIN CONTINUOUS VISUAL AND VOICE CONTACT WITH THE
5 CERTIFIED APPLICATOR.

6 (C) WITHIN 6 MONTHS AFTER THE ALLEGED VIOLATION OCCURRED, A
7 PERSON MAY FILE A COMPLAINT WITH THE SECRETARY ALLEGING A VIOLATION OF
8 THIS SECTION.

9 (D) THE DEPARTMENT SHALL ADOPT REGULATIONS AS NECESSARY TO CARRY
10 OUT THE PROVISIONS OF THIS SECTION.

11 5-209.

12 Each commercial application of a pesticide shall be under the supervision of a
13 certified pest control applicator or certified public agency applicator who is
14 responsible and liable for the application. [Each application of a restricted use
15 pesticide by a certified private applicator shall be done under his supervision, and he
16 is responsible and liable for the application.]

17 5-210.2.

18 (a) (1) (I) [A] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
19 PARAGRAPH, A person who violates any provision of this subtitle is subject to a civil
20 penalty of not more than \$2,500 for a first violation of this subtitle.

21 (II) A PERSON WHO VIOLATES § 5-207.1 OF THIS SUBTITLE IS
22 SUBJECT TO A CIVIL PENALTY OF AT LEAST \$1,000 AND NOT MORE THAN \$2,500 FOR A
23 FIRST VIOLATION OF THAT SECTION.

24 (2) A person who violates any provision of this subtitle is subject to a civil
25 penalty of not more than \$5,000 for each subsequent violation of this subtitle.

26 (3) Each day a violation under this subsection occurs is a separate
27 violation.

28 (4) In addition to the denial, suspension, or revocation of the license,
29 permit or certificate, the Secretary may impose a civil penalty on the holder of a
30 license, permit, or certificate under paragraph (1) or (2) of this subsection for each
31 violation of this subtitle.

32 (5) The total penalties imposed on a person for violations under this
33 subtitle that result from the same set of facts and circumstances may not exceed
34 \$25,000.

1 **Article - Courts and Judicial Proceedings**

2 5-619.

3 (a) The following persons or agencies shall be immune from civil or criminal
4 liability in connection with the conducting of a criminal background investigation
5 under Title 5, Subtitle 5, Part VI of the Family Law Article or a criminal history
6 records check under Title 19, Subtitle 18[,] of the Health - General Article OR TITLE
7 5, SUBTITLE 2 OF THE AGRICULTURE ARTICLE:

8 (1) An employer that in good faith relies on a criminal background
9 investigation or criminal history records check to deny or terminate an individual's
10 employment or participation in a facility;

11 (2) A State or local agency that in good faith relies on a criminal
12 background investigation or criminal history records check of an employer to grant,
13 deny, suspend, or revoke licensure, registration, approval, or certification of a facility;

14 (3) A local department of social services that in good faith relies on a
15 criminal background investigation to make a decision concerning the placement of a
16 child committed to it, including a decision to remove a child from a particular facility
17 or home; and

18 (4) A State or local agency that in good faith participates in the making
19 of a criminal background investigation or criminal history records check of an
20 employee or employer.

21 (b) The failure of an employer to require a criminal background investigation
22 of an individual when not required under Title 5, Subtitle 5, Part VI of the Family
23 Law Article or a criminal history records check when not required under Title 19,
24 Subtitle 18[,] of the Health - General Article OR TITLE 5, SUBTITLE 2 OF THE
25 AGRICULTURE ARTICLE may not give rise to civil or criminal liability on the part of
26 the employer for failure to conduct a criminal background investigation.

27 SECTION 2. AND BE IT FURTHER ENACTED, That:

28 (a) The Department of Agriculture shall establish a tracking system to
29 facilitate the reporting, recording and investigating of suspicious pesticide purchases.

30 (b) The tracking system shall include:

31 (1) A toll free telephone line for citizens to anonymously report
32 suspicious pesticide purchases; and

33 (2) A database, maintained by the Department, to record all citizen
34 reports.

35 (c) Once a report has been entered into the database, the Department shall:

36 (1) Review the report; and

1 (2) Forward to the appropriate federal or State law enforcement agency
2 any report the Department determines to contain credible evidence of potentially
3 dangerous or illegal activity.

4 (d) On or before October 1, 2004, the Department shall adopt regulations to
5 carry out these provisions.

6 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take
7 effect October 1, 2003.